

**REPORT TO THE DEPARTMENT OF JUSTICE
Regarding the Help America Vote Act of 2002**

March 22, 2006

WYOMING

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Secretary of State**

This report is submitted in an effort to inform the U.S. Department of Justice (DOJ) about Wyoming's efforts to implement the Help America Vote Act of 2002 (HAVA). It includes information about Wyoming's many accomplishments to date, additional activities which will be implemented during the 2006 election season, a report of the difficulties Wyoming is having trying to implement a statewide HAVA compliant voter registration system, and an outline of next steps toward full compliance. Wyoming has made good faith efforts regarding HAVA implementation. The state can easily document that it made earnest efforts beginning in the winter of 2003. Wyoming has been forthright in keeping the public and DOJ informed of its earnest activities and unforeseen difficulties.

HAVA Purposes and Requirements Outlined

Purposes of HAVA:

In reviewing Section 303 of HAVA, it appears as if the fundamental purposes of HAVA are:

1. To avoid disenfranchising any eligible voter;
2. To assure that no ineligible person votes;
3. To assure that no person votes more than once;
4. To avoid, and when necessary act upon, cases of fraud; and
5. To protect the integrity of federal elections.

Requirements of HAVA:

The requirements of HAVA as outlined in the Act are:

1. Develop state plan;
2. Replacement of punch card and lever voting machines;
3. Machines must provide a paper/audit trail;
4. Provide accessible equipment;
5. Buy machines that are error rate compliant;
6. Adopt a uniform definition of what constitutes a vote;
7. Provide for provisional balloting;
8. Establish a state-based complaint procedure for reporting of any election violations;
9. Single state agency for military absentee voters;
10. Military requirements of two general election cycles for absentee voters;
11. State must submit a report to the EAC;
12. Train election officials, poll workers & election volunteers;
13. Educate voters;
14. Improve accessibility & quality of polling places; and
15. Create a statewide voter registration list.

Wyoming's Progress Toward HAVA Compliance:

Wyoming has made consistent, steady progress toward full implementation of HAVA from the time it was enacted. Wyoming's State Plan was submitted on time and there has been constant progress toward implementation. The Plan has been reviewed appropriately. The Original State Plan, two annual reports and one update are attached for review. As can be seen in detail in these documents, which are posted on the Wyoming Secretary of State's website, Wyoming has met all

but one of its performance goals. Wyoming has:

- Implemented a state-based complaints procedure which meets all the requirements of HAVA.
- Enacted provisional voting statutes and provisional voting processes which were utilized during the 2004 election.
- Provided voting information at every polling place during the 2004 election.
- Replaced all punch card and lever voting machines and completed all testing of the machines. Training is underway.
- Replaced all central count voting equipment (except for the counting of absentee ballots). All testing of the machines is complete and training is underway.
- Provided at least one piece of accessible equipment for every polling place, either a DRE or AutoMark (touch screen) unit.

The equipment purchased by Wyoming does address the audit (paper trail) requirements of HAVA and allows an opportunity for the voter to change his vote before the permanent record is produced. All voting systems purchased meet the current NASED voting system standards.

Although not required as part of Wyoming's State Plan, Wyoming chose to address the issue of universal access to voting. The state has disbursed approximately \$300,000 in federal Health and Human Services (HHS) funds directly to counties and to Protection and Advocacy Inc. (P&A), for use in assisting people with disabilities to exercise their right to vote. In addition to making polling place improvements and purchasing assistive equipment, the state has formed an excellent alliance with Wyoming P&A to provide voter information to people with disabilities.

Another part of Wyoming's State Plan which was not required but chosen to be included by Wyoming concerns the military and overseas voters. Statutory provisions were implemented and the Office of Secretary of State was established as the single office responsible for providing information regarding voter registration procedures to be used by absent military and overseas voters. In addition, the state has taken action to provide an absentee ballot to any eligible voter through the next two scheduled general elections for federal office, if the voter so requests.

The Wyoming Legislature has also taken action toward an effective implementation of HAVA. The following Wyoming statutes have been created or modified specifically for the purposes of HAVA implementation: W.S. 22-2-121 (Chief election officer to prepare forms; rules; advice); W.S. 22-2-113 (Availability and form of registry lists; use of copies; election record; purging); W.S. 22-3-105 (Investigation of voter qualifications; Striking names from registry; notice; appeal); W.S. 22-3-108 (Official registry list information); W.S. 22-3-115 (Grounds for cancellation of registration); W.S. 22-3-117 (Absentee registration generally; use of federal postcard); W.S. 22-3-118 (Proof of identity); W.S. 22-9-101 *et seq.* (Absentee Voting); W.S. 22-15-105 (Challenged person may vote; generally (provisional voting)).

Statewide Effort:

All of the above accomplishments were achieved with the input and assistance of many public groups including:

- AARP
- Attorney General's Office
- Democratic Party
- Governor's Office
- League of Women Voters
- Military Representative
- Minority Population Representative
- Protection & Advocacy Services, Inc.
- Republican Party
- Student Representative
- Wyoming Association of Municipal Clerks & Treasurers
- Wyoming County Clerks Association
- Wyoming County Commissioners

The Wyoming County Clerks Association and many individual clerks gave innumerable hours and invaluable assistance to the implementation of all aspects of HAVA.

Present Situation:

Despite very best efforts, Wyoming has not been able to implement a new, HAVA compliant, voter registration system. A report was submitted to the U.S. Department of Justice on February 2, 2006 giving an historical overview of the project. That report outlined all activities to date and stated in part:

“ The counties in Phase 1 have been trained and continue to practice in the practice environment until they “Go Live” February 13th. The counties in Phase 2 are scheduled for training on the system beginning February 9th with a “Go Live” date of March 13th. The plan is for the whole state to be on the system using the system completely by the first of April 2006” (p. 3).

After the seven Phase 1 counties were trained on the system, a mock election was held the week of January 30, 2006, in accordance with the contract. Because of problems conducting the mock election, the mock election period was extended and the vendor provided on-site support to the counties. Despite best efforts, only 70% of the mock election tasks could be conducted successfully. The roll out plan was then revamped. Three counties chose to “Go Live” to allow the conversion process to be tested, four counties did not move forward, and the software development and training schedules for the rest of the counties were extended through March ‘06.

During the additional weeks, the vendor continued to work on the software product. The seven Phase 1 counties (6 clerks and 1 deputy clerk) plus Secretary of State staff met with the vendor in Denver, Colorado to review the product March 1-3. The purpose was to determine if the product could be delivered to the remaining counties and be used in upcoming elections without jeopardizing the integrity of the elections. The counties unanimously recommended to the

Secretary of State that the project be discontinued because there was too much risk for use in future elections.

The vendor was notified on Friday, March 3rd that the state wished to exercise its right to terminate the contract. A settlement agreement is being negotiated, the essence of which is that the state will receive all of its money back minus the equipment which the state chose to retain. The state had paid \$3.9 million to the vendor. The vendor will return \$3.7 million to the state and the state will retain all of the equipment which had been deployed to the counties. As of this date, a verbal agreement has been reached and paperwork drafted. There has been no final signing.

Factors to Consider as the State Moves toward Complete Compliance:

In determining a plan of action to move the state forward toward complete HAVA compliance, Wyoming considered many factors.

1. The integrity of elections is of ultimate importance. Wyoming has always run good elections with very few difficulties and no major difficulties have ever affected a federal election.
2. Wyoming is the least populated state in the United States with under 500,000 people statewide. We have a huge geographic area speckled with small towns and rural communities. This is an advantage when it comes to conducting elections. The smallness of the population means people in the communities actually know each other. It would thus be very difficult to actually perpetrate a voter fraud, especially of any magnitude.
3. There have been few reported cases of suspected voter fraud in Wyoming in the past 20 years and the three known cases were pursued.
4. The state of Wyoming avoids disenfranchising voters by virtue of being a same day voter registration state. Voters can register at the polls and vote.
5. To assure that only those individuals who are eligible to vote do vote, Wyoming statutes require that every person who registers must show an ID. A list of allowable forms of ID are contained in state rules.
6. Wyoming has had very few close elections and a close election for any federal office has not occurred in recent history. However, statutes are in place to address such circumstances. Wyoming has a mandatory recount statute applicable to any race that is with a 1% margin and state canvassing statutes that provide for a forum to address any matters of election concern.

Plan of Action:

Any plan of action intended to move the state toward complete compliance must be built around the purposes of HAVA. The state is already performing very well when it comes to not disenfranchising any eligible voter. Through same day voter registration, provisional ballots and an active public education program, including education of groups of individuals with disabilities, there is little, if any, possibility that an eligible voter would be disenfranchised.

There are already solid statutes and a workable network of agencies in place to assist in avoiding

cases of voter fraud and to take action if necessary.

There are many processes already in place to assure that no ineligible person votes and that no person votes more than once. Wyoming currently has a statewide voter registration list which is maintained at the state level. County clerks maintain their county's voter registration data and upload to the state voter registration list as directed by statutes. Also, the state receives information from the State Department of Health, Office of Vital Records regarding deaths of Wyomingites, and the Secretary of State's Office relays that information to county clerks so they can remove the names of deceased individuals from the voter registration rolls. In addition, the state currently receives information from the federal courts regarding felons who are no longer eligible to vote and the Secretary of State's Office also relays that information to the county clerks.

Next steps:

The next steps must be to continue toward the implementation of a HAVA compliant statewide voter registration list while continuing to protect the integrity of the elections. Therefore, we will place our initial efforts in improving those systems which we currently have or can reasonably implement before the 2006 election, rather than try to jam something in place and thus risk the integrity of Wyoming's election.

Improvement 1: Statewide Voter Registration List

Wyoming currently has a statewide voter registration system to which the counties upload once per year, according to state statutes. Three counties use the system as their primary voter registration system through on line access. The voter registration list resides on the state mainframe which is in a secure facility, which adheres to best security practices and technology. The Secretary of State will work toward a plan of increased uploading of data from the counties so the statewide voter registration data will be more current. The ideal goal as a possible step toward long term improvement would be to upload on a regular schedule during the election year and then 30 days prior to the election when voter registration closes so county and state lists will be synchronized immediately prior to the election. To execute this plan, the Secretary of State staff will need to coordinate with the State CIO, the Director of the IT Division at the State Department of Information and Technology (State ITD Director), the specific programmers responsible for the statewide list, and county clerks and IT staff.

A meeting was held with the CIO on March 16, 2006. HAVA issues were discussed and the Secretary of State's plan was discussed. The CIO has agreed to assist in moving the plan forward.

Times are scheduled for the Secretary of State staff to meet with the State ITD Director. The purpose is to explore the implementation of the plan for more frequent uploads. The specific programmers responsible for the statewide list report to the IT Director so the Director has the

authority to commit his agency's resources to this project, if it is technically feasible. Further

updates will be provided after that meeting.

Although use of the current statewide voter registrations list, with some modifications, may assist Wyoming in the 2006 election, Wyoming must now look for a viable long term plan. Toward that end, Wyoming is contacting vendors to request information from them. There are many vendors who have recently entered the elections marketplace and other vendors who are struggling to remain solvent in the midst of such national election change. Therefore, Wyoming's initial criteria in screening possible vendors to provide a voter registration system for Wyoming are:

1. The company must currently have already developed, built and tested a statewide voter registration system; and
2. The company must have implemented a statewide voter registration system in at least three states, or have contracts and be in the process of implementing a statewide voter registration system in at least three states; or
3. A state may offer its voter registration system to Wyoming if it has been successfully used in at least one election.

Improvement 2: Duplicate Record Checks

Currently the state uses the statewide voter registration list to check for duplicate voter entries. Counties are statutorily required to upload their voters' data once per year on February 15th and a duplicate records check is run soon thereafter. The Secretary of State will work toward a plan of increased duplicate records checks. The ideal goal as a possible step toward long term improvement would be to run a duplicate records check 60 days and 10 days prior to the primary and general election; and then 60 days after each election. The purpose of the first pre-election check would obviously be to find any duplicate listings. The resolution of any issues would then be checked just 10 days prior to the election. The check 60 days after the election is for the purposes of finding any duplicates to determine if the number of duplicates, if any, would have materially affected the outcome of the election and for prosecution of voter fraud, if appropriate. This is a feasible plan since the population of Wyoming is so low and the number of registered voters is only approximately 230,000.

To execute this plan, the Secretary of State staff will need to coordinate with the Director of the IT Division, the specific programmers responsible for the statewide list, and county clerks and IT staff.

Times are scheduled for the Secretary of State staff to meet with the State ITD Director. The purpose is to explore the implementation of the plan for additional duplicate records checks and at more useful times during the election process. As discussed above, the specific programmers responsible for the statewide list report to the ITD Director so the Director has the authority to commit his agency's resources to this project, if it is technically feasible. Further updates will be provided after that meeting.

One excellent aspect of Wyoming's current voter registration list is that it was recently updated by all counties and it contains very clean data. During the process of preparing for roll out of the

planned Wyo-Reg program, the vendor worked with all counties to eliminate any duplicates, clean up any partial records and fix any typos or other things which cause “dirty data” (Dirty data does

not necessarily mean duplicate, or inappropriate records, just mistakes in legitimate records or partial fields of data which were not assigned to any particular voter.)

Improvement 3: Death Records

Currently there is no electronic system to obtain notices of death records from the Wyoming Department of Health, Vital Records Division. The Division sends death records to the Secretary of State’s Office on paper, on an unscheduled basis. Secretary of State staff then distributes the information through the mail to each appropriate county. The ideal goal as a possible step toward long term improvement would be to obtain the death records from the Division of Vital Records in electronic format and then forward them electronically to the counties. A simple PDF format would work. If the Secretary of State’s Office cannot get the death records electronically, at a minimum, the paper copy could be converted by the Secretary of State’s Office to PDF and sent electronically to the counties, saving transport time.

In addition to obtaining the records electronically, it would be very advantageous to obtain the death records on a schedule that better fits with checking election records in a timely manner. It would be ideal if the timing of the deletions due to death would coincide with the duplicate records check. In this way, the voter registration lists would be the most accurate immediately prior to the primary and general election.

To determine in what manner this plan can be executed, Secretary of State’s staff will meet with Director and other key players from the Division of Vital Records. The focus will be twofold, speeding up the process by transporting data to the counties electronically, and obtaining the data at better times. Further updates will be provided after meeting(s) with the Division of Vital Records.

Improvement 4: Felon Checks

Currently in Wyoming the Secretary of State’s Office receives information from the federal courts regarding felons who are no longer eligible to vote and the Secretary of State’s Office relays that information to the county clerks. However, the Secretary of State’s Office has no access to the records of the Wyoming Division of Criminal Investigation (DCI). During the development of the Wyo-Reg program an interface was developed to bring felon records into the Wyo-Reg system. It took months of planning and programming to develop that interface and that portion of the Wyo-Reg program seemed to be operating properly. Unfortunately, there is not a direct programming correlation between transporting data from DCI to Wyo-Reg and transporting data from DCI to the state mainframe where the statewide voter registration data is housed. However, there may be something salvageable or information that is useable in trying to match current voter registration data with felon data.

To explore this option the Secretary of State staff will need to coordinate with the Director of the IT Division, which houses both the state’s voter registration system and the state’s DCI

information. If that meeting shows any potential for a matching of DCI and voter registration data, the Secretary of State's Office will proceed in meeting with the DCI administrators and the programmers responsible for the two programs. If a matching system is even possible, the timing of the matches should coincide with the duplicate checks and death records checks. The viability of such a matching system is unknown at this time.

Improvement 5: Restoration of Voting Rights

There is another aspect of checking felon records. Under Wyoming law, restoration of a felon's voting rights is granted by the Wyoming State Board of Parole. Therefore, restoration of rights information resides with the Office of the Board of Parole. Once again, due to the low population in Wyoming, the number of felon records with restored voting rights is quite low. Through the Wyo-Reg project, we were able to assist the Office of the Board of Parole to convert their records from paper to an Excel spreadsheet. The goal, even though Wyo-Reg is not moving forward, is to obtain the restoration records electronically, on the schedule previously discussed, forward that information to the county clerks so they can update their voter records, both quickly and timely.

Improvement 6: Drivers License - Social Security Information - Unique Identifier

This is the most difficult portion of the HAVA for Wyoming to address now that the Wyo-Reg project has not been successful so close to the 2006 primary election. Wyoming is not a Motor Voter State. Therefore, Wyoming does not have any already existing tie into Department of Transportation (DOT) information. Complicating matters is the fact that the state of Wyoming does not have a state owned telecommunications backbone interconnecting all counties which would presently be substantial enough to transport election information. All counties have Internet access but the bandwidth and transmission speed varies widely across the state. In working with counties through the Wyo-Reg project, it was becoming increasingly apparent that even functioning software would likely transmit data slowly, given the connectivity of most county offices.

Therefore, one goal would be to work toward a long term plan of reassessing each county's connectivity options putting in place a decent infrastructure upon which a statewide voter registration system can run.

A second goal would be to work toward a long term plan to obtain a voter registration system which is HAVA compliant and which perhaps has a small enough "footprint" to move data rapidly on a reasonable amount of bandwidth.

Once the above two goals are addressed, it would then be possible to rebuild an interface from DOT to the HAVA compliant voter registration system. The Secretary of State's staff spoke previously with the CIO and the Director of ITD regarding an "interim" connection just for use in the '06 election. The CIO and the Director of ITD were concerned that a minimum of 7 months would be needed to come up with and implement any possible option of interfacing with the current DOT system. At this late date, given an August Primary Election, this is not an option to pursue for the short run. These more difficult aspects will be explored fully after the reasonably obtainable improvements are underway. Interconnectivity between counties and the state and

electronic interfaces between the statewide voter registration system and other state agencies will definitely be worked out in the long run to reach full HAVA compliance as quickly as is reasonably possible without jeopardizing the 2006 elections.

Once a voter registration system is obtained and the DOT interface is completed, it will then be possible to also interface with the Social Security Administration (SSA) through the American Association of Motor Vehicle Administrators (AAMVA) to obtain a match on the last 4 digits of an individual's social security number, when a driver has no appropriate driver's license.

The current state of Wyoming voter registration system does issue a unique identifier to each voter within the state. Although this is a good start toward each voter having a unique ID, we have yet to determine if this unique number can stay with a voter should the voter transfer to another jurisdiction. This is another issue which must be discussed with the Director of the IT Division and the specific programmers responsible for the statewide list. Times are scheduled for the Secretary of State staff to meet with the State ITD Director. More information will be provided to DOJ once we have discussions about all of these issues with appropriate persons.

Improvement 7: Statewide Voter Registration Application Form

Currently Wyoming does not have a statewide voter registration form, rather each county develops and uses its own form which must comply with state statutory standards. Through the process of working on the Wyo-Reg project, a standard voter registration application form was developed. That form, with some modifications, can now be used by all counties within Wyoming to bring more uniformity to the voter registration application process. The Secretary of State's staff and county clerks have been working on finalizing a useable, and statutorily proper form. That form will soon be distributed to all counties for use for the upcoming election season.

Improvement 8: Expanded Absentee Voting

In the 2006 Legislative Session, which just ended March 11, 2006, a new law was passed which expanded absentee voting for Wyomingites (Enrolled Act 45, awaiting Governor's signature). Although not directly related to HAVA, the law will allow Wyomingites greater opportunity to cast a ballot. As part of that act, (22-9-125(c)), the Secretary of State's Office was authorized to adopt rules to guard against abuses of the elective franchise. The Secretary of State's Office will elect to adopt such rules in time for the 2006 primary election.

Improvement 9: Definition of What Constitutes a Vote

Wyoming has a statute which addresses the issue of what constitutes a vote. W.S.22-14-114. Counting of ballots states:

For ballots designed to be counted by machine, each individual vote shall be determined by the voting equipment and shall not be determined subjectively by human tabulation except when the intent of the voter is unmistakable but the ballot was received in such damaged, soiled, or other condition that it is rejected by the machine. The secretary of state may promulgate rules establishing standards for counting such ballots. For ballots not designed to be counted by machine, only votes clearly marked, as provided by W.S. 22-14-104 and rules

promulgated pursuant to this code, shall be tallied. For write-in votes, names which are misspelled or abbreviated or the use of nicknames of candidates shall be counted for the candidate if the vote is obvious to the board.

The Wyoming State Plan states: "After it is determined which system(s) will be used, rules will be promulgated through the usual rule making process to address uniform use of the equipment and will designate what constitutes a vote for each specific type of voting equipment" (p. 14).

All equipment was deployed to Wyoming counties, and testing was completed and required repairs or replacements made by December 31, 2005. Now that equipment has been deployed, tested and the training has recently begun, the Secretary of State's Office will now begin the rule making process to complete the requirements of this portion of HAVA. The Secretary of State's Office will adopt the rules in time for the 2006 primary election.

Reporting:

As can be seen through this report, the Wyoming Secretary of State has acted in good faith to implement all aspects of HAVA. The Secretary of State's Office has done so while hiring no full time staff and while spending few HAVA dollars on administration or overhead. Rather funds have been directed specifically at those activities which will directly benefit voters, such as purchase of voting equipment and improved access for individuals with disabilities. Wyoming has also implemented HAVA through a very open and public process by involving a variety of interested groups, and has made reports available on the state's website.

Wyoming will continue in this vein, making its progress toward HAVA compliance a matter of public involvement. The Wyoming Secretary of State's Office expects to be in frequent contact with DOJ to report on those improvements which can be safely implemented for the 2006 election and to lay out a plan for eventual full compliance with the law.